

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA ANN TORRES, Personal
Representative of the Estate of ROBERT GARZA
TORRES, Deceased,

Plaintiff-Appellant/Cross-Appellee,

v

CITY OF FLINT,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

June 24, 2003

No. 232611

Genesee Circuit Court

LC No. 99-066694-NI

MARY TORRES, Individually and as Next Friend
of KELLY TORRES, a Minor, ALBERT
TORRES, and JORDANA GOMEZ, Next Friend
of CRYSTAL GOMEZ, a Minor,

Plaintiffs-Appellants/Cross-
Appellees,

v

CITY OF FLINT,

Defendant-Appellee/Cross-
Appellant.

No. 232956

Genesee Circuit Court

LC No. 00-067423-NO

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

In these consolidated cases, plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition in each case. Defendant has filed a claim of cross appeal in each case. We affirm in both cases but based on a differing analysis from the trial court. These appeals are being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I. FACTS

Decedent Robert Torres was killed and plaintiffs Mary Torres, Kelly Torres, and Crystal Gomez were injured when a vehicle driven by decedent collided with another vehicle at the intersection of 12th Street and Van Slyke in Flint. Plaintiffs filed separate complaints alleging that defendant failed to install and maintain proper traffic control devices to reduce the dangers associated with the intersection and that as a result, the intersection was not reasonably safe for public travel.¹ The trial court consolidated the cases for purposes of hearing and decision.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10) in each case, arguing that it was entitled to governmental immunity because plaintiffs' claims of inadequate traffic control devices did not fall within the applicable highway exception to governmental immunity. Defendant relied on *Nawrocki v Macomb County Rd Comm*, 463 Mich 143, 179-184; 615 NW2d 702 (2000), and its companion case, *Evens v Shiawassee County Rd Comm*. Defendant asserted that even if *Nawrocki, supra*, did not apply, the undisputed facts did not establish that the traffic control devices constituted a point of hazard or a point of special danger. The trial court granted the motion in each case, holding that *Nawrocki, supra*, did not apply retroactively, but that the evidence did not create a question of fact as to whether the traffic control devices at the intersection constituted a point of hazard or a point of special danger.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. ANALYSIS

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. There are several narrowly drawn exceptions to governmental immunity, including the highway exception. This exception requires a governmental agency having jurisdiction over a highway to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). The definition of "highway" includes "bridges, sidewalks, trailways, crosswalks, and culverts on the highway," but does not include "alleys, trees, and utility poles." MCL 691.1401(e). MCL 691.1402 imposes duties and liability on state and county road commissions only for the improved portion of the roadway.

The scope of the highway exception to governmental immunity has been the subject of several recent decisions. In *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), our Supreme Court held that the duty to maintain a highway in reasonable repair included the duty to erect warning signs or traffic control devices at a "point of hazard" or a "point of special danger." A "point of hazard" or a "point of special danger" was deemed to be a condition that directly affected vehicular traffic on the improved portion of the roadway so that travel was reasonably safe. *Id.*, 621.

¹ Plaintiffs also alleged claims against the driver of the other vehicle. Those claims were settled, and are not at issue in these appeals.

Pick, supra, was overruled in *Nawrocki, supra*, in which our Supreme Court held that the highway exception did not contemplate conditions arising from points of hazard or special danger outside the actual roadbed designed to vehicular travel. The *Nawrocki* Court held that state and county road commissions have no duty under the highway exception to install, repair, maintain, or improve traffic control devices, including signs and lighting. *Nawrocki, supra*, 179-184.

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. On cross appeal, defendant argues that *Nawrocki, supra*, applies retroactively and serves to bar plaintiffs' claims. Defendant also argues that plaintiffs' claims fail under a *Pick* analysis because plaintiffs did not put forth sufficient evidence to establish the existence of a question of fact as to whether the traffic control devices constituted a "point of hazard" or "point of special danger."

We affirm the trial court's decision granting summary disposition in favor of defendant in each case, although for a different reason than that stated by the trial court. The trial court erred in holding that *Nawrocki, supra*, was to be applied prospectively only. In *Adams v Dep't of Transportation*, 253 Mich App 431, 438-440; 655 NW2d 625 (2002), a special panel of this Court held that *Nawrocki, supra*, must be given full retroactive effect. The trial court's application of the *Pick* analysis to these cases was erroneous; nevertheless, we affirm because the trial court reached the correct result. *Portice v Otsego County Sheriff's Dep't*, 169 Mich App 563, 566; 426 NW2d 706 (1988). The immunity conferred on governmental agencies is broad, and exceptions are to be narrowly construed. *Nawrocki, supra*, 158. Consistent with that principle, no action may be maintained against a governmental agency unless it is clearly within the scope and meaning of MCL 691.1402(1). *Weaver v Detroit*, 252 Mich App 239, 245; 651 NW2d 482 (2002). Traffic control devices are not part of the "highway" as that term is defined by MCL 691.1401(e). *Id.*; see also *Nawrocki, supra*, 182 n 37. Therefore, a municipality cannot be held liable under the highway exception for alleged negligent maintenance and installation of traffic control devices because such an action does not fall within the scope and meaning of the highway exception. MCL 691.1402(1); *Weaver, supra*. Summary disposition was correctly granted for this reason.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette